

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

LARRY SMITH,

Plaintiff

V.

DUANE BLACK, Warden,

Defendant

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CIVIL NO. 4:CV-04-2267

(Judge Jones)

## Order

September 1, 2005

**THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:**

The plaintiff Larry Smith (“Plaintiff” or “Smith”), an inmate presently confined in the Luzerne County Correctional Facility, in Wilkes-Barre, Pennsylvania, filed this civil rights action pursuant to 42 U.S.C. § 1983. He seeks damages and injunctive relief for an alleged violation of his First Amendment right to exercise his religion.

On August 2, 2005, the defendant, Duane Black (“Defendant” or “Black”), filed a Motion for Summary Judgment, along with a statement of material facts and supporting brief. (Rec. Docs. 14-16). Plaintiff’s brief in opposition to this motion is now long overdue and Plaintiff has neither made an appropriate filing nor requested

an extension of time in which to do so. Thus, we will direct Plaintiff to file a brief in opposition.<sup>1</sup> M.D. Pa. Local Rule 7.6.

Generally, a dispositive motion may not be granted merely because it is unopposed; however, when a Plaintiff fails to prosecute or comply with a court order, the court may dismiss the action pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. We will consider dismissing this case for failure to prosecute and comply with a court order under the authority of Rule 41(b) if Plaintiff fails to file a brief in opposition to the Motion or otherwise communicate with the Court within twenty (20) days of the date of this Order.

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1 . By Order dated October 18, 2004, this Court directed the parties' attention to the Local Rules of Court. (See Rec. Doc. 5). The Order referred specifically to an opposing party's duty to file a brief in opposition to a motion within fifteen (15) days after service of the movant's brief. (See M.D. Pa. Local Rule 7.6).

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

1. Plaintiff shall file a brief in opposition to Defendant's Motion or otherwise communicate with the Court within twenty (20) days of the date of this Order. If Plaintiff fails to file a brief in opposition, we will consider dismissing Plaintiff's complaint pursuant to Rule 41(b) for failure to prosecute and comply with a court order.

s/ John E. Jones III  
JOHN E. JONES III  
United States District Judge